U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: LIN 06 096 52611 Office: NEBRASKA SERVICE CENTER Date: JUL 11 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a lawyer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner reiterates previous assertions. We uphold the director's basis of denial.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Juris Doctor from the University of Wisconsin Law School. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, law. The director then concluded that the proposed benefits of the petitioner's work, assisting Korean clients in the Wisconsin area, including business clients involved in exporting, would not be national in scope. On appeal, the petitioner asserts that his private law practice has had an impact beyond Wisconsin. He notes that he represents clients in bankruptcy proceedings administered by federal courts using federal law. He also notes that he has represented business clients involved in interstate and international commerce. He further asserts that his clients buying and selling real estate impact interstate commerce and are subject to federal regulation. Finally, he asserts that his practice as the only Korean-speaking attorney in the Milwaukee legal community has made the area more desirable for Korean migration and business development.

This office has explicitly stated that while pro bono legal services as a whole serve the national interest, the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 217, n.3. We

find this reasoning applicable to most private practice lawyers who are not otherwise influencing the field of law at the national level. The fact that the petitioner's area of practice involves federally regulated areas such as bankruptcy and real estate is insufficient. Like the pro bono attorney, the impact of an individual bankruptcy, real estate or federal tax lawyer (also federally regulated) at the national level is negligible. The record contains no evidence that the petitioner proposes to author articles in law reviews or other trade journals or otherwise impact the practice of bankruptcy or real estate law at the national level.

The fact that the beneficiary happens to originate from Korea and, thus, speaks Korean, is not evidence that he has made or will make an impact on the field of law other than to benefit his specific clients. While benefiting individual clients has intrinsic merit, the impact is not national in scope, as discussed above. If Citizenship and Immigration Services (CIS) were to accept that the beneficiary's bilingual ability warrants approval of the waiver, CIS would need to approve the waiver for every alien from a non-English speaking country with a degree in a profession that provides services to the public (social workers, therapists, doctors, psychologists, etc.) The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all bilingual aliens providing services to the public. While we recognize that the petitioner is self-employed and, thus, that the alien employment certification process is not applicable, it remains that we do not have jurisdiction over shortage issues,[1] including whether there is a shortage of Korean-speaking attorneys in Milwaukee. Moreover, the petitioner has not satisfactorily established that a Milwaukee shortage is a national issue.

Even if we accepted that the proposed benefits of the petitioner's practice would be national in scope, the petitioner must still establish that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The director concluded that simply demonstrating that there is a lack of attorneys with the same skill, fluency in Korean, was insufficient as the issue of a shortage of workers with specific skills falls under the jurisdiction of the Department of Labor. On appeal, the petitioner reiterates that he is self-employed and, thus, cannot utilize the alien employment certification process. He concludes that if the waiver is not approved, "the Milwaukee metropolitan area could again be without a Korean speaking attorney. This would result in a major metropolitan area (1.68 million individuals) being without the services of an attorney who is fluent in both Korean and English."

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training, such as being bilingual, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the

[1] *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

jurisdiction of the Department of Labor. *Id.* at 221. We emphasize that the inapplicability or unavailability of the alien employment certification process for self-employed aliens cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner has asserted that his firm is steadily growing and expanding. The fact that the petitioner is able to make a living in his field is not evidence of a track record of success with some degree of influence on the field as a whole. The record lacks evidence that the petitioner has authored influential articles in law reviews, other trade journals or treatises or other evidence of his impact in the field, such as letters from lawyers nationwide who have been influenced by him.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.